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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JOHN LAVIN, : **ANSWER**
:
:
Plaintiff, : 08 Civ. 2392 (BSJ) (DFE)
:
v. :
:
THE UNITED STATES OF AMERICA, :
:
Defendant. :
:
-----X

Defendant, the United States of America, by its attorney, Michael J. Garcia,
United States Attorney for the Southern District of New York, answers plaintiff's complaint on
information and belief as follows:

1. Denies the allegations contained in paragraph 1 of the complaint, except
admits plaintiff was entitled to receive medical care from the Department of Veterans Affairs.

2. Denies the allegations contained in paragraph 2 of the complaint, except
admits plaintiff was treated at the Department of Veterans Affairs Medical Center at 130 West
Kingsbridge Road, Bronx, New York from November 22 to November 23, 2004.

3. Admits the allegations contained in paragraph 3 of the complaint.

4. Paragraph 4 of the complaint constitutes plaintiff's legal argument to which no response is required, except admits that on or about November 17, 2006, a Form 95 Claim for Damage and Injury, was filed with the Department of Veterans Affairs, which alleged malpractice and negligence on the part of the Department of Veterans Affairs, Bronx Hospital, Bronx, New York, on behalf of John Lavin.

5. Admits the allegations contained in paragraph 5 of the complaint.

6. Paragraphs 6 and 7 of the complaint constitute plaintiff's legal argument to which no response is required.

7. Admits the allegations contained in paragraphs 8 and 9 of the complaint.

8. Denies the allegations contained in paragraphs 10, 11, and 12 of the complaint.

DEFENSES

9. The injuries and damages alleged in the complaint were not proximately caused by a negligent or wrongful act or omission of an employee of the United States.

10. The plaintiff's recovery in this action is limited to \$500,000.00, the amount of the claim which the plaintiff presented administratively. 28 U.S.C. § 2675(b).

11. Plaintiff is not entitled to a trial by jury.

WHEREFORE, defendant requests judgment dismissing the complaint, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 19, 2008

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Defendant

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